

April 1, 2004

CONSTELLATION GENERATION GROUP, LLC  
Application for Finding "Exempt Wholesale  
Generator" Status for Constellation Generation  
Group, LLC and R.E. Ginna Nuclear Power  
Plant, LLC

ORDER

WELCH, Chairman; DIAMOND and REISHUS, Commissioners

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## **I. SUMMARY**

Through this Order, we make the necessary findings to determine that the R.E. Ginna Nuclear Power Plant (Plant), currently owned by Rochester Gas and Electric Corporation (RG&E), is an "eligible facility" under federal law. These findings must be made by the Commission to allow for the sale of the Plant, because the Commission has jurisdiction over the retail rates of Central Maine Power Company (CMP), an affiliate of RG&E.

## **II. BACKGROUND AND DECISION**

RG&E is in the process of selling the Plant pursuant to an open auction process. As a result of the auction process, Constellation Generation Group, LLC (Constellation Generation) was selected as the winning bidder. RG&E entered into an asset purchase agreement with Constellation Generation and with Constellation Energy Group, Inc., its parent, on November 24, 2003. A request for approval of the transfer by the New York State Public Service Commission is pending.

As a condition to closing the sale of the Plant, the Federal Energy Regulatory Commission (FERC) must determine that the new owner of the nuclear facility, which will be R.E. Ginna Nuclear Power Plant, LLC (Ginna LLC) (a special purpose affiliate created to assume ownership of the Plant), will be an Exempt Wholesale Generator (EWG) under Section 32 of the Public Utility Holding Company Act (PUHCA). Because the cost of the Plant was reflected in RG&E's retail rates as of October 24, 1992 (the date of enactment Section 32 of PUHCA), FERC can find Ginna LLC to be an EWG only if the regulatory commissions having retail rate jurisdiction over the selling utility and the affiliates of the selling utility make findings necessary to afford "eligible facility" status to the Plant.<sup>1</sup>

RG&E and CMP are subsidiaries of Energy East Corporation. Energy East is a registered holding company under PUHCA. CMP is therefore an affiliate of RG&E for purposes of PUHCA. As the regulatory agency with jurisdiction over RG&E's affiliate's

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<sup>1</sup> 15 U.S.C. Section 79z-5a(c).

retail rates, the Maine Commission must certify that allowing the Plant facility to be eligible: will benefit consumers; is in the public interest; and does not violate Maine law. FERC requires an EWG application to include a certification that all applicable state commissions have made these necessary findings.

Maine's Restructuring Act (35-A M.R.S.A. § 3201-3217) separates generation from the transmission and distribution of electricity, removes generators from the definition of electric utility, and requires the divestiture of generation assets by transmission and distribution utilities. The auction conducted by RG&E to sell the Plant is similar to the divestiture of generation assets conducted pursuant to Maine law by CMP and other Maine utilities. We conclude that consumers will benefit by the region-wide implementation of electric restructuring consistent with the restructuring that the Maine Legislature has required in Maine. Thus, the transfer of the Plant as described above is consistent with Maine's restructuring law and is not in violation of Maine law. Accordingly, we find that allowing the R.E. Ginna Nuclear Power Plant to be an eligible facility: will benefit consumers; is in the public interest; and does not violate Maine law.

Dated at Augusta, Maine, this 1<sup>st</sup> day of April, 2004.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl  
Administrative Director

COMMISSIONERS VOTING FOR:      Welch  
                                                 Diamond  
                                                 Reishus

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.